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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ABOVE THE CEILING, LLC,

Case No. 2:15-cv-01766-JAD-GWF

8 Plaintiff,

9 v.

REPORT AND RECOMMENDATION

10 WESTERN ARCHITECTURAL SERVICES,
11 *et al.*,

Defendants.

12 This matter is before the Court on Plaintiff's Renewed Motion to Enforce Settlement
13 Agreement and Reduce to Judgment (ECF No. 74), filed on February 11, 2019. To date, no party
14 has filed an opposition to this motion and the time for response has now expired.

15 **BACKGROUND**

16 This matter arises from allegations of breach of contract and unjust enrichment against
17 Defendant Western Architectural Services ("Western"). Defendant Western hired Plaintiff
18 Above the Ceiling, LLC ("ATC") as a subcontractor to perform framing and drywall work on the
19 LDS Tijuana Temple Project. Defendant failed to pay ATC in full for such work. *See*
20 *Complaint* (ECF No. 1). The parties discussed settlement over email and agreed to settle for
21 \$275,000 to paid over twelve months beginning in August 2017. On April 24, 2018, Plaintiff
22 filed a motion to enforce settlement agreement. ECF No. 65. The Court conducted a hearing,
23 granted Plaintiff's motion, and concluded that the parties reached an enforceable settlement
24 agreement. *See Minutes* (ECF No. 68). The Court, however, declined to reduce the settlement
25 agreement to judgment because the terms of the agreement allowed Defendant Western twelve
26 months to pay and the deadline did not expire until August 8, 2018. *See Order* (ECF No. 72).
27 On August 27, 2018, Plaintiff filed a motion to enforce settlement agreement and reduce to
28 judgment. ECF No. 69. The Court denied Plaintiff's motion without prejudice because Plaintiff

1 offered no evidence that Defendant Western failed to tender the settlement amount. *Id.* The
2 Court's order denying Plaintiff's motion without prejudice was mailed to Defendant Western and
3 returned as undeliverable on March 1, 2019. *See* ECF No. 78.

4 On November 1, 2018, the Court granted Defendant Western's counsel of record's
5 motion to withdraw and the Court ordered Defendant to retain new counsel no later than
6 November 30, 2018. ECF No. 71. On January 30, 2019, the Court ordered Defendant to show
7 cause, in writing, on or before February 8, 2019 why sanctions should not be imposed for failure
8 to comply with the Court's order to retain new counsel. On February 12, 2019, the undersigned
9 magistrate judge entered a report and recommendation that default be entered against Defendant
10 Western for failing to obtain successor counsel. *See Report and Recommendation* (ECF No. 76).
11 The undersigned's report and recommendation was mailed to Defendant Western and returned as
12 undeliverable on February 25, 2019. *See* ECF No. 77.

13 Plaintiff requests enforcement of the settlement agreement and an order reducing the total
14 settlement amount of \$275,000 to judgment. Plaintiff attaches email negotiations regarding the
15 settlement agreement between Tracy Jones, CEO of Defendant Western, and Dan Campbell, the
16 owner and person most knowledgeable for Plaintiff ATC. ECF No. 74, Exhibit 1. Plaintiff
17 further attaches a declaration of Mr. Campbell in which he states that he has not received any
18 payments from Defendant Western despite multiple attempts to contact them to request payment.
19 ECF No. 74, Exhibit 2.

20 DISCUSSION

21 "[I]t is now well established that the trial court has power to summarily enforce on motion
22 a settlement agreement entered into by the litigants while the litigation is pending before it." *In re*
23 *City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994) (quoting *Autera v. Robinson*, 419
24 F.2d 1197, 1200 (D.C.Cir.1969)). Summary enforcement is inappropriate where material facts
25 concerning the existence or terms of a settlement agreement are in dispute. *Id.* at 985. The Court
26 has already found that the parties reached an enforceable settlement agreement. ECF Nos. 68, 72.
27 Further, Plaintiff has offered a declaration of its owner that he has not received any payments from
28 Defendant Western to show Defendant's breach and the amount of settlement payment that

1 remains unpaid. *See Motion* (ECF No. 74), Exhibit 2. Therefore, it appears that the full amount
2 of \$275,000.00 remains unpaid.

3 Settlement agreements are generally favored and are enforceable so long as they are entered
4 into in good faith. *Siltronic Corp. v. Employers Ins. Co. of Wausau*, 176 F. Supp. 3d 1033, 1040
5 (D. Or. 2016) (citing *G.F. Hodges Agency v. Rees*, 202 Or. 139, 157, 272 P.2d 216, 224 (1954)).
6 In addition, the public interest favors judicial policies that promote the completion of litigation.
7 *Kalinauskas v. Wong*, 151 F.R.D. 363, 365 (D. Nev. 1993). Although discussed in the context of
8 the confidentiality of settlement agreements, the Court in *Kalinauskas v. Wong* stated that “public
9 interest seeks to protect the finality of prior suits [and the secrecy of settlement] when desired by
10 the settling parties. *Id.* Sound judicial policy fosters and protects this form of alternative dispute
11 resolution. *Id.*

12 The Court found that the parties reached an enforceable settlement agreement prior to the
13 Court instructing Defendant Western to retain new counsel. The undersigned issued a report and
14 recommendation that default be entered against Defendant Western after it failed to retain new
15 counsel. It appears, however, that the parties intended to reach a resolution of litigation via
16 settlement. Plaintiff has not withdrawn its renewed motion to enforce settlement. Plaintiff has not
17 expressed an interest with the Court that default be entered against Defendant Western at this time.
18 Further, enforcement of the settlement agreement would promote the completion of litigation in
19 that it more closely reflects the desire of the parties. The undersigned, therefore, recommends that
20 Plaintiff’s motion to enforce settlement be granted and that judgment for the total amount of
21 \$275,000 now due be entered.

22 Accordingly,

23 **IT IS HEREBY RECOMMENDED** that Plaintiff’s Renewed Motion to Enforce
24 Settlement Agreement and Reduce to Judgment (ECF No. 74) be **granted** and that judgment for
25 the total amount of \$275,000 now due be entered.

26 **IT IS FURTHER RECOMMENDED** that the undersigned’s Report and
27 Recommendation (ECF No. 76) that default be entered against Defendant Western be **withdrawn**

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1 because entering a judgment enforcing the settlement agreement renders the default moot.

2 **NOTICE**

3 This Report of Findings and Recommendation is submitted to the assigned district judge
4 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for
5 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the
6 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local
7 Rules of Practice, any party wishing to object to a magistrate judge's findings and
8 recommendations of shall file and serve *specific written objections*, together with points and
9 authorities in support of those objections, within 14 days of the date of service. *See also* 28 U.S.C.
10 § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to Magistrate
11 Judge's Report of Findings and Recommendation," and it is subject to the page limitations found
12 in LR 7-3(b). The parties are advised that failure to file objections within the specified time may
13 result in the district court's acceptance of this Report of Findings and Recommendation without
14 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition,
15 failure to file timely objections to any factual determinations by a magistrate judge may be
16 considered a waiver of a party's right to appellate review of the findings of fact in an order or
17 judgment entered pursuant to the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th
18 Cir. 1991); Fed. R. Civ. Pro. 72.

19 Dated this 27th day of June, 2019.

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21 GEORGE FOLEY, JR.
22 UNITED STATES MAGISTRATE JUDGE
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